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No. 09-500

Supreme Court, U.S.
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In The

Supreme Court Of The United States

YANET DISHMEY ROSARIO DE GEORGE,
Individually and on behalf of others,
Petitioner,

v.

AMERICAN AIRLINES, INC.,
a subsidiary of AMR CORPORATION,
Respondent,

- and -

DAWIND GEORGE, MARIZ DIAZ,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS FOR THE
SECOND CIRCUIT

REPLY BRIEF FOR PETITIONERS

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PETITIONER'S REPLY BRIEF

Contrary to the Respondents' Brief in Opposition ("Opp."), De George's Petition does not concern a factual review of the decisions below. Instead, it addresses important matters of federal law and immigration policy. The District Court and the Court of Appeals erroneously applied a New York probate statute to strip the Petitioner of her spousal rights even though it neither addresses nor contemplates the validity of sham immigration marriages, and federal law deems them invalid and void ab initio.

The courts below disregarded Ms. Valderrama's purported criminal conduct and applied New York probate law in a vacuum. According to the Court of Appeals, "New York law does not prohibit a surviving spouse from recovering [a wrongful death settlement] even if the marriage was entered into for 'sham' or 'green card' purposes." Petitioner's App. at 29.[1] Such legal analysis ignores federal law pertaining to sham marriages, rewards those who engage in illegal immigration activity, and supports immigration marriage fraud.

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[1] References to Mrs. De George's Appendix to the Petition for a Writ of Certiorari are cited as "Petitioner's App." References to the Appellant's Appendix submitted in the Second Circuit are cited as "C.A. Appell. App." References to the Appellant's Addendum to the Appendix in her Reply Brief submitted to the Second Circuit are cited as "Appell. Add."

A. **The Respondents' Account of the Procedural Facts Leading Up to the District Court's Decision Are Misleading And Improperly Imply that the Petitioner Was Uninterested in Her Husband's Estate Until After The Respondents Reached a Settlement**

The Respondents point out that they petitioned the Surrogate's Court of New York County for Letters of Administration of the Estate of Milton George. Opp. at 5. They also imply that Petitioner De George was uninterested in her husband's estate. "Neither Denise Valderrama nor Yanet Dishmey [Petitioner De George] made an appearance to claim any right to Letters of Administration as spouse or to object in Surrogate's Court to Letters of Administration being granted to Dawind George and Maria Diaz." Opp. at 5. The reason Petitioner De George did not petition for Letters of Administration in New York was because she filed a wrongful death action in Texas as Mr. George's spouse. Her journey through the federal courts to New York was solely a result of the removal and transfer of her case pursuant to 28 U.S.C. § 1407.

The Respondents also imply that the District Court's January 12, 2004 Consolidation Order gave them the authority to settle the Petitioner's case. However, the Respondents violated the very terms of the Order. In relevant part, it states:

[T]he person authorized to conduct settlement negotiations with the defendants on behalf of all claimants and the estate of such decedent shall be

known as the Designated Representative and shall be determined as follows:

> (1) The Designated Representative shall be the person designated as such **by agreement of all plaintiffs** in those individually filed cases.
> (2) **In the event that there is no such agreement, then:**
> (A) When only one personal representative of the estate of the decedent has been appointed, the personal representative shall be the Designated Representative . . .

(C.A. Appell. App. 664)(emphasis added). The Respondents never attempted to reach an "agreement of all plaintiffs" as to the appointment of a Designated Representative. Instead, they bypassed the express provisions of the Order and entered into unilateral settlement negotiations with the defendants.

B. Contrary to the Respondents' Position, the Petitioner Presented Substantial Evidence that Mr. George's Marriage to Denise Valderrama was a Sham Immigration Marriage

At the district court level, Petitioner De George requested a period of formal discovery on the issue of Mr. George's fraudulent immigration marriage to Denise Valderrama. (C.A. Appell. App. 303). In fact, she noticed the depositions of Mario George, Maria Diaz, Dawind George, and Ms. Valderrama. However, her requests were denied,

and the District Court disallowed the depositions.[2] Appell. Add. 1-7. Nevertheless, ample evidence exists to show that the marriage between Mr. George and Ms. Valderrama was fraudulent.

The Respondents would have this Court believe that Petitioner De George "never submitted any evidence that the Valderrama-George marriage was entered into solely to deceive federal immigration officials." Opp. At 2. This is a blatant misrepresentation of the facts. In her Petition, De George proffered evidence that:

- Denise Valderrama, Mr. George's first wife, was romantically involved with his brother;

- Ms. Valderrama did not cohabitate with Mr. George;

- Mr. George lived with and had a child with Maria Diaz during his purported marriage to Ms. Valderrama;

- Mr. George hired an attorney in the Dominican Republic to procure a divorce from Ms. Valderrama; and

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[2] Without permitting discovery and without holding a due process hearing, the District Court abolished the Petitioner's spousal right to share in the settlement proceeds procured as a result of her husband's wrongful death. Petitioner De George appealed this violation of her due process rights, but the Circuit Court did not address this important issue.

- The U.S. Government recognized Petitioner De George as Mr. George's surviving spouse after the crash of Flight 587 and issued her a visa.

Petition for a Writ of Certiorari ("Petition") at 6-7. Additional record evidence shows that Ms. Diaz knew that Mr. George's marriage to Ms. Valderrama was carried out as a "green card marriage." (C.A. Appell. App. 381). Moreover, Mr. George continuously supported Petitioner De George (both emotionally and financially) despite his "marriage" to another woman. Importantly, **Ms. Valderrama never appeared in court or submitted a brief to defend her position as Mr. George's legal wife.** Instead, the Respondent Co-Administrators have championed her cause for their own benefit and ignored Petitioner De George's rights.

The Respondents' assertion that Petitioner De George "never submitted any evidence that the Valderrama-George marriage was entered into solely to deceive federal immigration officials" is contradicted within the Respondents' own Brief. Section II of their Brief takes the position that "in asserting that the Valderrama-George marriage was a 'sham, conducted only for immigration purposes . . ." the Petitioner cites to just "three pieces of 'evidence' . . ." Opp. at 11. It then lists three affidavit statements and claims that two are contradicted by the Declarant. *Id.* However, the Respondents failed to cite record evidence of this contradiction, and the Petitioner is not aware of any such contradictions.

C. Ample Evidence Exists that Petitioner De George Was Mr. George's Lawful Wife at the Time of the Crash

The Respondents refer to Petitioner De George as Mr. George's "girlfriend" despite their knowledge of the Petitioner's valid marriage certificate from the Dominican Republic. Opp. at 3. The Respondents also fail to acknowledge the plethora of evidence supporting the validity of her marriage to Mr. George in the form of affidavit evidence, love letters written after their marriage, cards, signed photographs, and wire transfer receipts showing his financial support. (C.A. Appell. App. 340-349, 351-363, 410-413). Among the items that Mr. George sent the Petitioner was a signed "Sweetheart of the Year" award thanking the Petitioner for, "filling [his] life with kindness and light, for being the only person with whom [he was] happy to share love and respect." (C.A. Appell. App. 345-346). He also sent a card with the inscription "For My Wife" and a hand-written note stating, "from your husband who loves you." (C.A. Appell. App. 341). Such evidence contradicts the Co-Administrators' affidavit statements that Mr. George knew that his marriage to the Petitioner was "wrong" or that he intended to annul their marriage.

The Respondents also claim that Mr. George never made "any effort to legitimize his relationship with Yanet Dishmey [Petitioner De George]." Opp. At 5. This statement ignores record evidence of Mr. George's ceremonial marriage to Petitioner De George and Mr. George's initiation of divorce proceedings in the Dominican Republic

during the month before he married the Petitioner. (C.A. Appell. App. 388-389, 393-400).

D. Resolution of the Petitioner's Case Hinges on Federal Immigration Law and Related Federal Common Law; It is Neither Addressed Nor Contemplated By the Domestic Relations Laws of New York

The Immigration and Nationality Act (INA) regulates sham immigration marriages. Although it does not address their validity, long standing federal common law fills the interstices of the INA in this regard. *Zatuchni v. Secretary of Health and Human Services*, 516 F.3d 1312, 1328 (Fed. Cir. 2008)(Dyk, J., concurring in the result and dissenting from the majority opinion); Montana *v. United States*, 124 F.3d 1269, 1274 (Fed. Cir. 1997). Such federal case law holds that sham immigration marriages are invalid and void ab initio. *United States v. Lutwak*, 195 F.2d 748 (7th Cir. 1952); *United States v. Rubenstein*, 151 F.2d 915 (2d Cir. 1945).

The Respondents cite *Ex Parte Burrus*, 136 U.S. 586 (1890) and *State of Ohio ex rel. Popovici v. Agler*, 280 U.S. 379 (1930) for the erroneous position that this is a domestic relations issue reserved for regulation by the State of New York. These cases are factually distinguishable from the instant situation. The issue in *Ex Parte Burrus* was whether a federal court had jurisdiction to issue a writ of *habeas corpus* to recover the care and custody of a child in a custody dispute. 136 U.S. at 589. The *Agler* case is likewise distinguishable as it involved the Vice-Consul of

"Roumania's"[3] attempt to evade the jurisdiction of a state court in a divorce proceeding on the basis of Article 3, Section 2 of the Constitution. *Agler*, 280 U.S. at 382. Here, we are not concerned with the issue of jurisdiction; neither are we concerned with a custody matter or a divorce proceeding.

This case is not a matter of overriding New York's right to regulate and control domestic relations. To the contrary, it is a matter of immigration and nationality because it involves an attempt to defraud the United States Government through a sham immigration marriage.

E. The District Court and the Second Circuit Erroneously Applied New York Law to Determine the Validity of the Valderrama/George Marriage

New York Est. Powers & Trusts L. § 5-1.2(a) is not applicable. This statute does not address or contemplate sham immigration marriages. It simply provides the grounds for disqualifying a surviving spouse for purposes of New York probate law. In their Brief, the Respondents rely on a single case from the Surrogate's Court of Bronx County to support their argument to the contrary. *In Matter of Estate of Dominguez*, 2002 WL 31844696 at * 1 (Sur. Ct. Bronx. Cty., Nov. 18, 2002). However, it would contravene public policy to allow an unreported case from a state county surrogate's court to control the regulation of sham marriages when the underlying state statute fails to address the issue at all.

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[3] This is the spelling used in *Agler*, 280 U.S. at 379.

Section 6 of New York's Domestic Relations Laws is likewise inapplicable. It voids a marriage if one of the parties is still legally married to their first spouse. In the instant case, however, there was no marriage between Mr. George and Ms. Valderrama because they lacked the mutual consent necessary to form a valid marriage contract. Indeed the "marriage" was invalid and void ab initio. Therefore, contrary to the Respondents' position, it is immaterial whether Mr. George's attorney finalized the Valderrama/George divorce papers in the Dominican Republic.

Even if New York law did apply, which it does not, the Respondents have not and cannot overcome the strong presumption of validity that attaches to the Petitioner's marriage as recognized by *Grabois v. Jones*, 89 F.3d 97, 100 (2d Cir. 1996). The Respondents claim that "meaningful record searches and sworn statements" rebut this presumption. Opp. at 14. However, there is no record evidence that the Respondents conducted a "meaningful record search" to determine Mr. George's proper spousal beneficiary. Because the Respondent Co-Administrators have a financial interest in favoring an estranged wife over the wife who played an integral role in Mr. George's life, their reliance on self-serving affidavits is not surprising. Indeed, concrete record evidence demonstrates the validity of the Petitioner's marriage to Mr. George. Such evidence included: 1) a valid Dominican marriage certificate (C.A. Appell. App. 325-328); 2) love letters and cards to the Petitioner from Mr. George signed as her "husband"; (C.A. Appell. App. 340-346); 3) financial

support from her husband (C.A. Appell. App. 410-413); 4) recognition by the United States Government that the Petitioner was Mr. George's wife in the form of a visa (C.A. Appell. App. 365-372; and 5) recognition by a post-crash charity in the Dominican Republic that the Petitioner was Mr. George's wife (C.A. Appell. App. 3437-438).

F. Federal Law Cited by the Petitioner is On Point and Applicable

Finally, the Respondents claim that the INA and corresponding federal case law are inapplicable since they relate to criminal prosecution. The nature of the proceeding is not material to this analysis. Federal statutes governing sham marriages and their legislative history demonstrate Congress' intention to regulate and deter them.

CONCLUSION

Because Petitioner De George's case sets forth important issues of federal law and immigration policy, she respectfully requests that her Petition for Writ of Certiorari be granted.

Respectfully submitted,

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